



March 7, 2002

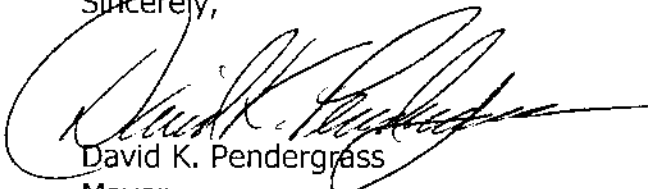
The Honorable Robert O'Farrell
Presiding Judge of the Superior Court
Monterey County
P.O. Box 1819
Salinas, CA 93902

Dear Judge O'Farrell,

At their meeting on March 5, 2002, the City Council of the City of Sand City considered the attached response, prepared by the Sand City Public Works Director, to the 2001 Monterey County Grand Jury Report. After careful review and discussion, the City Council approved the attached response to the Findings and Recommendations section of the 2001 Final Report on Monterey Bay beaches.

As required by Section 933 and 933.05 of the California Penal Code, Sand City is submitting the attached response to the 2001 Monterey County Grand Jury Report.

Sincerely,



David K. Pendergrass
Mayor

City Hall
1 Sylvan Park,
Sand City, CA
93955

Administration
(831) 394-3054

Planning
(831) 394-6700

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(831) 394-2472

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(831) 394-1451

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Incorporated
May 31, 1960

Enc: Response to 2001 Grand Jury Report

cc: Monterey Peninsula Cities
MRWPCA

GRAND JURY FINAL REPORT TITLED

#7 Monterey Bay Beaches

RESPONSE TO FINDINGS by City of Sand City

[as required by Section 933.05(a) California Penal Code]

(Agency)

Find- ing #	Check One §933.05(a)		Specify the portion of the Finding that is disputed and include an explanation of the reasons therefor.
	(1)	(2)	
From Grand Jury Final Report	The respondent agrees with the Findings	The respondent disagrees wholly or partially with Finding: see next column	CONTINUE ON ATTACHED SHEETS AS NECESSARY
#3	X		See response comments (attached).
#4	X		See response comments (attached).

CITY OF SAND CITY
RESPONSE TO 2001 MONTEREY COUNTY
CIVIL GRAND JURY REPORT
JANUARY 2, 2002

REPORT NO. 7 MONTEREY BAY BEACHES

Finding #3: There is inadequate storm drain pipe maintenance in Monterey Peninsula cities.

Response: The City of Sand City agrees with the findings, with these additional comments.

Comments: Sand City's shoreline along Monterey Bay between Seaside and Fort Ord is 7500 feet long. There is only one storm water outlet to Monterey Bay along the entire shoreline. This is a 90" concrete pipe which drains 965 acres of the City of Seaside and 70 acres in Sand City with a coastal outfall located adjacent to Bay Avenue in Sand City. Based on a 1966 agreement between Seaside and Sand City, the City of Seaside has assumed responsibility for the proper maintenance, repair and legal obligation of the 90" storm drain line that discharges at the Bay Avenue coastal outfall in Sand City.

Only a portion of each city drains into the 90" storm drain line and the coastal outfall. The remaining drainage areas of the two cities are serviced by other drainage systems. For example, the two large shopping centers in Sand City have been developed with "state of the art" underground percolation systems for storm water runoff. In this area of Sand City, the rain water runoff is directed to large underground chambers that filter the water and then spread the water into long underground percolation pipes that allow the clean water to percolate back into the ground. This type of system does not allow debris and contaminants to reach the coast or Monterey Bay. These underground systems are serviced and maintained on a periodic basis by a private company that specializes in this type of service.

Because there are two drainage basins (965 acres in Seaside and 70 acres in Sand City) that feed into the 90" storm drain line, it requires each city to perform the maintenance and housekeeping activities within each drainage area to keep debris from entering the storm water catch basins and being discharged on to the beach. Periodic cleanup and pick up at the Bay Avenue coastal outfall are required to remove the debris that is discharged in this area.

However, each city is responsible for the storm water discharges entering the catch basins that lead into the 90" storm drain. For example, there are 307 drain inlets in Seaside and 20 within Sand City. This provides an order of magnitude of

the responsibilities for each city to maintain their facilities and to reduce and/or eliminate debris entering the collection system and being discharged onto the beach and Monterey Bay.

Sand City has a continuing program of street sweeping. The City contracts with the City of Monterey Public Works Department to sweep the city streets on a regular schedule. Major streets are swept weekly (52 times each year) and the minor streets are swept every other week. The major streets include Contra Costa Avenue, Catalina Avenue, Ortiz Avenue, California Avenue, Playa Avenue, Tioga Avenue, and Sand Dunes Drive. All other streets are in the minor category. Sand City also has a contract with Hope Rehabilitation Services (previously Gateway Industries) for general cleanup of the City. This includes removal of debris from the streets which reduces if not eliminates debris from entering the storm water catch basin. The City's current contract with the City of Monterey for street sweeping is \$16,813.68 and the contract with Hope Industries for general cleanup is \$74,000. Both contracts are for the 2001-2002 fiscal year. This is the fourth year for each contract. Copies of these contracts will be made available on request.

The Bay Avenue coastal outfall does need some study and review to evaluate if certain design changes could provide some possible improvements –

- appearance and public safety on the beach
- functional operation
- reduction or elimination of outfall clogging and preventing overflow or backup on to city streets

For the past several years, Sand City has been participating in the Storm Water Task Force with all of the other Monterey Peninsula cities which is being conducted by the MRWPCA.. The objective of the group is to cooperatively fulfill the federal requirements to obtain the National Pollution Discharge Elimination System (NPDES) Phase II Permit by March 2003. Attached as Exhibit A is a draft copy of the Mutual Agreement for the cities to work together to fulfill the NPDES Phase II Permit and time schedule. It is anticipated Sand City will ratify this agreement within several months and will adopt a storm water utility ordinance before the end of this year.

As part of the Phase II NPDES permit activities, the two cities will work together to maintain the storm drainage facilities and work towards reducing the debris reaching the Monterey Bay shoreline.

Finding #4. Only one public information forum on how to keep beaches and coastal waters healthy was conducted in Monterey County during 2001. It was held in Monterey on February 28, 2001.

Response: Sand City agrees with this finding. Sand City Council members and staff have participated in community beach cleanup activities for many years.

One of the activities of the combined storm water Phase II permit activities is an educational program addressing storm water, water quality, eliminating debris, and the effects on Monterey Bay and the adjacent beaches. Sand City will be an active participant in supporting these educational activities.

Recommendation #1: The Board of Supervisors direct the Environmental Health Division of the Monterey County Health Department to share its expertise with Monterey Peninsula cities, working with the cities to determine what support they require to develop a community education program. The community education program that each Monterey Peninsula city develops should include, but not be limited to: a. Sources of run-off pollution into Bay waters; b. Monterey Bay bacterial pollution; c. Potential illnesses from polluted ocean water; d. Methods of prevention of pollution of Monterey Bay waters.

Response: The City of Sand City's health officer is the Monterey County Director of Environmental Health. Therefore, the Monterey County Health Department, Division of Environmental Health is available to Sand City on an as-needed basis to provide the services described in the recommendation.

Comments: The joint storm water task force as previously described has high on its agenda of activities an active educational program. The task force presently has a subcommittee working on developing a continuing educational program.

The task force holds monthly meetings the fourth Wednesday of each month at the office of the Monterey Regional Water Pollution Control Agency. These meetings are open to the public. Grand Jury members are invited to attend these meetings to observe, comment, or participate in the discussions.

D-R-A-F-T

MEMORANDUM OF AGREEMENT PROVIDING FOR IMPLEMENTATION OF THE MONTEREY REGIONAL STORM WATER POLLUTION PREVENTION PROGRAM

THIS AGREEMENT, is made and entered into this _____ day of _____, 2002, by and between the MONTEREY REGIONAL WATER POLLUTION CONTROL AGENCY (Agency), a local Joint Powers Authority (JPA) of the State of California; COUNTY OF MONTEREY, a political subdivision of the State of California; CITY OF _____, a municipal corporation of the State of California; CITY OF _____, a municipal corporation of the State of California; CITY OF _____, a municipal corporation of the State of California; CITY OF _____, a municipal corporation of the State of California. CITY OF _____, a municipal corporation of the State of California.

All of the above-mentioned entities are hereinafter collectively referred to as "PARTIES" or individually as "PARTY."

RECITALS:

- A. In 1987, Congress added Section 402 (p) to the Federal Clean Water Act (CWA) 33 U.S.C. Section 1342 (p)), which requires certain municipalities and industrial facilities to obtain a National Pollutant Discharge Elimination System (NPDES) permit for the discharge of storm water to navigable water. NPDES permits are also required under Section 402 (p) for any storm water discharge which the Federal Environmental Protection Agency (EPA) or a state has determined contributes to a violation of a water quality standard, or is a significant contributor of pollutants to surface waters.
- B. Section 402 (p) further required EPA to promulgate regulations for initial NPDES permit applications for storm water discharges. The EPA promulgated such regulations in November 1990
- C. The EPA has delegated authority to the California State Water Resources Control Board (SWRCB) to administer the NPDES permit process within California and, in turn, the SWRCB has delegated authority to the California Regional Quality Control Board – Central Coastal Basin (RWQCB-CCB) to administer the NPDES permit process within its region.

- D. Pursuant to Section 402 (p) of the CWA and EPA regulations, the RWQCB-CCB is expected to adopt orders further defining the program that the PARTIES are to develop and implement.
- E. In and for the mutual interest of the PARTIES, the PARTIES wish to develop and implement the Program by entering into this Agreement for the purpose of ensuring continued participation, in terms of cost and administrative responsibilities.
- F. AGENCY is a local public Joint Powers Agency (JPA) of the State of California, duly organized and existing within the County of Monterey. The County of Monterey is a political subdivision of the State of California. All other PARTIES are either municipal or private corporations, duly organized and existing under the laws of the State of California.

NOW, THEREFORE, THE PARTIES HERETO FURTHER AGREE, AS FOLLOWS:

Section 1. Monterey Regional Storm Water Pollution Prevention Program

- 1.01. The Monterey Regional Storm Water Pollution Prevention Program ("Program") is intended to fulfill the obligations of the PARTIES with regard to EPA's Phase 2 Storm Water NPDES requirements. These requirements are expected to be imposed upon the PARTIES by an NPDES permit that will be issued by the RWQCB-CCB at a future date
- 1.02 The Program is a collective effort and implementation of area-wide activities, designed to benefit all PARTIES.

Section 2. Management Committee

- 2.01 A Management Committee is hereby created to provide for overall Program coordination, review, and budget oversight, with respect to the NPDES Permit.
- 2.02 The Management Committee may, as necessary, adopts the Bylaws contained in Exhibit "A" for its governance. The Management Committee may from time to time revise these Bylaws by formal action of the Management Committee and review Bylaws for its governance.
- 2.03 The Management Committee is the official management and oversight body of the Program. The Management Committee shall direct and guide the Program and review and approve the Program Budget. The Management Committee shall consider permit compliance, including benefit to a majority of the PARTIES, as a primary objective in approving Program tasks and corresponding budgets.

- 2.04 The Management Committee may periodically re-evaluate and make recommendations to the PARTIES concerning reallocation of the proportion of the annual Program contribution that each PARTY shall pay.
- 2.05 The voting membership of the Management Committee shall consist of one designated voting representative from each PARTY. An alternative voting representative may be appointed by each PARTY.
- 2.06 A quorum of the Management Committee shall be achieved when voting representatives from at least five (5) of the PARTIES are present at any Management Committee meeting.
- 2.07 Meetings of the Management Committee, including any closed sessions with Program Legal Counsel, shall be conducted in accordance with the "Brown Act" (Government Code Section 54950 et seq.). It is recognized that the individual parties may have differing opinions on whether the Brown Act legally should be interpreted as applying to members of the Management Committee. In executing this Agreement, the parties do not waive their right to take the position that the Brown Act legally does not apply, but voluntarily agree to follow Brown Act procedures for Management Committee meetings. Except for official meetings of the Management Committee, nothing herein shall be interpreted to require meetings between staff members of the individual PARTIES (including designated representatives of the PARTIES) to be subject to the Brown Act, where the Brown Act would not otherwise apply. Each PARTY is individually responsible for ensuring that it complies with the Brown Act.
- 2.08 The affirmative vote of at least that number of the voting members of the Management Committee which collectively contribute at least fifty percent (50%) of the area-wide Program costs (a "Majority Vote"), is necessary to approve any measure brought before the Management Committee.
- 2.09 The Management Committee shall be responsible for selecting any consultant(s) or contractor(s) who are to be paid from Program funds ("Outside Contractors"), using a process approved by the Contracting Agent, and for reviewing and approving any contracts with Outside Contractors, including the scope(s) of work, schedules of performance, use of subcontractors, and compensation for such Outside Contractors.
- 2.10 The Management Committee may select an attorney (Program Attorney) or firm that is experienced with the Clean Water Act and Municipal Storm Water NPDES Permits to provide legal advice to the Management Committee on all matters involving administration of the Program's NPDES Permit and such other matters upon which the Management Committee may seek legal advice or request legal representation. Program Legal Counsel shall not be responsible for providing legal advice related to

- permit compliance to individual PARTIES, but may provide such services under separate contract with any PARTY or PARTIES. The Program Manager may assist in coordination of activities with the Program Attorney, but shall not give direction without prior authorization from the Management Committee.
- 2.11 The Management Committee shall establish timelines and budgets for completion of Program tasks.
- 2.12 The Management Committee, through its Bylaws, may establish procedures for tracking, accounting for, and auditing the Program Fund.

Section 3. Program Budget

- 3.01 A collective budget for the Program (Program Budget) shall be based upon a projection of two (2) consecutive fiscal year cycles, however, the Budget shall be adopted for only one (1) fiscal year cycle. The Budget shall include a Contingency/Reserve Fund, which shall not exceed ten percent (10%) of the operating costs of the adopted Budget.
- 3.02 The PARTIES shall each pay a yearly assessment into a fund established for Program operations for their assigned portion of the Program Budget. The proportionate share of the Program Budget that each PARTY shall pay is shown in the schedule marked Exhibit BA hereto and incorporated by reference herein.
- 3.03 Except as provided in Section 6.03, the ending fund balance at the close of each fiscal year shall be disbursed annually to the PARTIES, or credited to the PARTIES' share of the next fiscal year's costs, in accordance with the PARTIES' defined participation rates, as requested by each PARTY.

Section 4. Program Manager and Contracting/Fiscal Agent

- 4.01 The Management Committee shall select a PARTY or Outside Contractor to act as the Program Manager for the Program. The Management Committee shall also select a PARTY or Outside Contractor to act as the Contracting/Fiscal Agent for the Program.
- 4.02 The Program Manager shall be responsible for Program management and administration, Permit management, and technical program management all in accordance with the NPDES Permit, this Agreement, Program Bylaws, and as directed by the Management Committee in the best interest of the PARTIES as a whole and individually. The Program Manager shall be paid, from Program funds in accordance with the adopted Program budget, for providing the services described hereunder. The Program Manager shall not be responsible for providing program management

services related to individual PARTIES' permit program, but may provide such services under separate contract with any PARTY or PARTIES.

- 4.03 The Contracting/Fiscal Agent shall be the treasurer of the Program funds. The Contracting/Fiscal Agent, in accordance with generally-accepted accounting procedures, shall keep the Program funds segregated from any other funds administered by the Contracting/Fiscal Agent; shall credit the Program with appropriate interest income earned on Program funds in each fiscal year; and shall not expend any funds except in accordance with the annual budget approved by the Management Committee, or as otherwise directed by the Management Committee. The Contracting/Fiscal Agent shall act in a reasonable amount of time to execute contracts with Outside Contractors, including the Program Manager, which have been requested and approved by the Management Committee. The Contracting/Fiscal Agent shall provide a copy of any contract executed on behalf of the Program to any PARTY or person designated by any PARTY or the Management Committee upon request. The governing body of the Contracting/Fiscal Agent, at its discretion, may delegate authority to execute agreements and contracts approved by the Management Committee, to a designated employee. Notice of any such delegation of authority shall be provided to the Management Committee.
- 4.04 The Program Manager and the Contracting/Fiscal Agent may request, as part of the annual Program Budget, reimbursement for reasonable and customary costs incurred in providing the services described hereunder. Reimbursement to the Program Manager and the Contracting/Fiscal Agent shall be subject to Management Committee review and approval as part of the Program Budget.
- 4.05 AGENCY shall serve as the initial Program Manager and the initial Contracting/Fiscal Agent for the Program.
- 4.06 AGENCY may withdraw as either the Program Manager or the Contracting Fiscal Agent upon the provision of ninety days (90) days'-written notice to the Management Committee. The Management Committee may select a new Program Manager upon the provision of ninety days (90) written notice to AGENCY.
- 4.07 In the event that the Program Manager or the Contracting/Fiscal Agent withdraws from the Program or from providing Program Manager or Contracting/Fiscal Agent services to the Program, another PARTY may serve as a successor Contracting/Fiscal Agent. Any PARTY willing to serve as successor Program Manager or Contracting/Fiscal Agent may be nominated by another PARTY. Selection of a Program Manager or Contracting/Fiscal Agent must be by majority vote of the Management Committee.

Section 5. Ancillary Rights and Duties of the PARTIES

5.01 In addition to the participation in the Management Committee, the PARTIES accept and agree to perform the following duties:

1. Each will comply with the NPDES Permit conditions set forth in its Community-Specific Plan;
2. Each will participate in Management Committee meetings and other required meetings of the PARTIES;
3. Each will implement its Community-Specific Program;
4. Each will provide certain agreed upon reports to the Program for purposes of reporting, on a joint basis, compliance with applicable provisions of the NPDES Permit and the status of Program implementation; and,
5. Each will individually address inter-agency issues, agreements or other cooperative efforts.
6. Each will only be responsible for performing the duties listed above within the limits of its jurisdiction.

~~4.025.02~~ This Agreement does not restrict the PARTIES from the ability to individually (or collectively) request NPDES Permit modifications and/or initiate NPDES Permit appeals for permit provisions to the extent that a provision affects an individual party (or group of PARTIES); however, any such PARTY (or PARTIES) shall make reasonable efforts to provide advance notice of their action to the other PARTIES and allow them to comment upon or join in their action before proceeding.

Section 6. Term of Agreement

- 6.01 The term of this Agreement shall commence on the date the last duly authorized representative of the PARTIES executes it.
- 6.02 This Agreement shall have a term of five (5) years.
- 6.03 Any PARTY may terminate its participation in this Agreement by giving the Chair of the Management Committee at least a thirty (30) day written notice. The terminating PARTY will bear the full responsibility for its compliance with the NPDES Permit commencing on the date it terminates its participation, including its compliance with both Community-Specific

and Program-wide responsibilities. Unless the termination is scheduled to be effective at the close of the fiscal year in which the notice is given, termination shall constitute forfeiture of all of the terminating PARTY's share of the Program Budget, for the fiscal year in which the termination occurred (both paid and obligated, but unpaid, amounts). In addition, unless notice of termination is provided at least ninety (90) days prior to the date established by the Management Committee for approval of the budget for the succeeding fiscal year, termination shall constitute forfeiture of all of the terminating PARTY's share of any unexpended, unencumbered funds remaining from all previous fiscal years. The cost allocations for the remaining PARTIES may be recalculated for the following fiscal year by the PARTIES without the withdrawing PARTY's participation.

Section 7. General Legal Provisions

- 7.01 This Agreement supersedes any prior agreement among the PARTIES regarding the Program, but does not supersede any other agreements between any of the PARTIES.
- 7.02 This Agreement may be amended by unanimous written agreement of the PARTIES. All PARTIES agree to bring any proposed amendment to this Agreement to their Council or Board, as applicable, within two (2) months following acceptance by the Management Committee.
- 7.03 This Agreement may be executed and delivered in any number of copies ("counterpart") by the PARTIES, including by means of facsimile. When each PARTY has signed and delivered at least one (1) counterpart to the Program, each counterpart shall be deemed an original and, taken together, shall constitute one and the same Agreement, which shall be binding and effective as to the PARTIES hereto.
- 7.04 No PARTY shall, by entering into this Agreement, participating in the Management Committee, or agreeing to serve as Fiscal Agent, Contracting Agency, Program Manager, and/or Legal Counsel, assume or be deemed to assume responsibility for any other PARTY in complying with the requirements of the NPDES Permit. This Agreement is intended solely for the convenience and benefit of the PARTIES hereto and shall not be deemed to be for the benefit of any third party and may not be enforced by any third party, including, but not limited to, the EPA, the SWRCB, and the RWQCB-CCB, or any person acting on their behalf or in their stead.
- 7.05 In lieu of and notwithstanding the pro rata risk allocation which might otherwise be imposed between the PARTIES pursuant to Government Code Section 895.6, the PARTIES agree that all losses or liabilities incurred by a PARTY shall not be shared pro rata, but instead, the

PARTIES agree that pursuant to the Government Code Section 894.4, each of the PARTIES hereto shall fully defend, indemnify and hold harmless each of the other PARTIES from any claim, expense or cost, damage or liability imposed for injury (as defined by Government Code Section 810.8) occurring by reason of the negligent acts of omissions or willful misconduct of the indemnifying PARTY, its officers, agents, or employees, under or in connection with or arising from any work, authority or jurisdictions delegated to such PARTY under this Agreement, including but not limited to any non-compliance by a PARTY with its obligations under the Program NPDES Permit. No PARTY, nor any officer, Board member, employee or agent thereof shall be responsible for any damage or liability incurred by reason of the negligent acts or omissions or willful misconduct of the other parties hereto, their officers, Board members, employees or agents under or in connection with or arising from any work, authority or jurisdictions delegated to such PARTY under this Agreement, including but not limited to any non-compliance by a PARTY with its obligations under the Program NPDES Permit.

- 7.06 In the event that suit shall be brought by any party to this contract, the PARTIES agree that venue shall be exclusively vested in the state courts of the County of Monterey, or where otherwise appropriate, exclusively in the United States District Court, _____ District of California, _____, California

IN WITNESS WHEREOF, the PARTIES hereto have executed this Agreement as of the dates shown below

MONTEREY REGIONAL WATER POLLUTION CONTROL AGENCY, a Joint Powers Authority and public agency of the State of California

Date: _____

APPROVED AS TO FORM:

By: _____

Chair, Board of Directors

By: _____

Legal Counsel

By: _____

General Manager

ATTEST:

Date: _____

By: _____

CITY OF _____, a public entity of the State of California

Date: _____

APPROVED AS TO FORM:

By: _____
Name, Mayor

By: _____
Name, City Manager

By: _____
Legal Counsel

ATTEST:

Date: _____

By: _____

1

REGIONAL STORM WATER PERMIT SCHEDULE

(Current as of 2-27-02)

ID	Task Name	2001												2002														
		J	F	M	A	M	J	J	A	S	O	N	D	J	F	M	A	M	J	J	A	S	O	N	D	J	F	M
1	Develop Interim Memorandum of Agreement																											
2	Develop FY 01/02 Budget & Cost-Sharing																											
3	Work with RWQCB to Develop Permit Language																											
4	Develop Long-Term Memorandum of Agreement																											
5	Define Permit Boundary																											
6	Develop Utility Ordinances and Funding Mechanisms																											
7	Develop Six Minimum Measures (with Measurable Goals and BMPs)																											
8	Develop Standardized Storm Water Mapping																											
9	Develop FY 02/03 Budget																											
10	Prepare Permit Application																											
11	Submit Permit Application																											
12	Develop FY 03/04 Budget																											

2/28 ♦